

FAO NO.679 OF 1992

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO.679 OF 1992

Date of Decision: 10-7-2006

- 1.Parkash Kaur widow of Ishar Singh
- 2.Kulwinder Kaur daughter
- 3.Harbans Singh son
- 4.Harbhajan Singh minor son
- 5.Surjit Kaur minor daughter
- 6.Sukhvinder Kaur minor daughter of Sh.Ishar Singh,
all residents of village Korwa Khurd, Tehsil Naraingarh, District Ambala
(minors through their mother Smt. Parkash Kaur acting as their next friend)

.....Appellants

VERSUS

- 1.Jawala Singh driver of Bus No.HYE-2276, Yamuna Nagar, Depot, (Sub Depot Naraingarh)
- 2.General Manager, Haryana Roadways, Yamuna Nagar Depot, Yamuna Nagar.
- 3.State of Haryana through the Collector, Ambala
- 4.Gurnam Kaur daughter of Shri Ishar Singh resident of Korwa Khurd, Tehsil Naraingarh, District Ambala (Given Up)
- 5.The National Insurance Company Limited, SCO57, Madhya Marg, Sector 26-D, Chandigarh

.....Respondents

CORAM:- HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.SS Dinarpur, Advocate
for the appellants.

Mr.SS Goripuria, Senior Deputy Advocate General,
Haryana for the respondents.

FAO NO.679 OF 1992

JUDGMENT

This appeal has been directed against the order dated 13-2-1992 passed by the Motor Accident Claims Tribunal, Ambala City vide which the claim of the petitioners was accepted and award for a sum of Rs.1,09,000/- was passed in favour of the claimants against the respondents. The liability of respondent No.5-Insurance Company was fixed to the extent of Rs.15,000/- out of the awarded amount paid to the claimants along with interest @ 12% per annum from the date of filing of the petition till realization.

In brief, the facts of the case are that on 28-11-1988 at about 9.00A.M. Ishar Singh since deceased was put at hearing in the District Court at Ambala City. He was waiting for the bus at bus stop of Patvi, Tehsil Naraingarh, District Ambala. In the meantime, bus No.HYE- 2276 belonging to Haryana Roadways Yamuna Nagar Depot driven by respondent No.1-Jawala Singh arrived there. The bus was full of passengers. As there was a great rush in the bus, respondent No.1-driver of the bus and conductor of the bus directed the passengers to sit on the roof of the bus. Upon which, Ishar Singh went to the roof top of the bus and thus travelled in the bus. When the bus reached in the way, a kikar tree branch struck Ishar Singh and he suffered multiple and grievous injuries on his person. When the bus reached, it was found that Ishar Singh suffered serious injuries due to the striking of kikar tree while sitting on the roof of the bus. He was removed to PGI where he succumbed to injuries on 30-11-1988.

It is further the case of the complainant that the present

FAO NO.679 OF 1992

accident has taken place due to rash and negligent driving of respondent No.1-driver of the Haryana Roadways, which was insured with National Insurance Company Limited.

It was also pleaded that at the time of accident , the deceased was aged 45 years and was earning Rs.4000/- per month. In due course of time, he would have got increment and promotion but due to the untimely death, the legal heirs of the complainant have suffered huge financial loss.

The aforesaid petition was contested on behalf of respondents No.1 to 3 and they filed a written statement, pleading therein that his journey from Patvi to Ambala City on the said bus, he was never asked to sit on the roof top by respondent No.1 or by conductor of the bus because all the passengers were sitting inside the bus. It was also denied that any passenger had boarded at the roof of the bus at Patvi. The death of Ishar Singh was not denied. The Insurance Company took up the plea that it is not liable to pay any amount of compensation to Ishar Singh as its liability is limited to the extent of Rs.15,000/- only.

On the pleadings of the parties, the following issues have been framed by the Tribunal:

- 1.Whether the accident on 28.11.1988 at about 9.00 A.M. Near village Patvi,Tehsil Naraingarh on Ambala-Naraingarh road, took place due to rash and negligent driving of respondent No.1 Jawala Singh driver of bus No.HYE-2276? OPP.

FAO NO.679 OF 1992

2.If issue No.1 is proved, whether petitioners are entitled to compensation, if so to what amount and from whom? OPP.

3.Whether the delay in the filing of the petition is liable to be condoned for the reasons stated in para No.23 of the petition? OPP.

4.Whether the liability of the Insurance Company is limited only to Rs.15,000/-? OPR-5.

5.Whether the Insurance Company is not liable as driver of the bus was not holding valid driving license at the time of accident? OPR-5.

6.Relief.

In support of the pleadings, both the parties adduced ocular as well as documentary evidence.

After going through the evidence and hearing the learned counsel for the parties, the learned Tribunal had returned the findings on Issue No.1 partly in favour of petitioner and partly against the respondents to the effect that the deceased being a member of the staff was equally responsible for the accident by allowing himself to travel on the roof top of the bus, which was not permissible under the Rules and the negligence attributed to each of them was in the ratio of 50-50.

While disposing of issue No.2 and taking into consideration the income of the deceased, the amount of compensation was assessed by the Tribunal at Rs.2,18,000/- out of which half of the amount i.e. Rs.1,09,000/- was awarded as compensation to the heirs of the deceased. However, the liability of the Insurance Company was held to be Rs.15,000/-

FAO NO.679 OF 1992

out of the awarded amount.

While disposing of issue No.5, it was held that Jawala Singh-respondent No.1 was holding a valid driving license on the date of accident.

In the net result, the award in the sum of Rs.1,09,000/- was passed jointly and severally against respondents No.1 to 3 along with interest @12% per annum from the date of filing of the petition till realization. The liability of respondent No.5 was held to the extent of Rs.15,000/- out of the amount awarded to the claimant.

During the pendency of appeal before this Court, an application under Order 6 Rule 17 CPC for amendment in the pleadings was moved to the effect that the claimant also owned some land, the income of which has not been considered by the Tribunal while assessing the compensation. After relying on the judgment in **Nagappa Vs. Gurudayal Singh** AIR 2003 Supreme Court 674, the proposed amendment was allowed wherein the claimant pleaded in para No.6 that the deceased Ishar Singh was earning Rs.3,000/- from the land owned by him in two villages i.e. Korwa Khurd and Babbak Majra.

I have heard the learned counsel for the parties.

On behalf of the appellant, it has been contended that there was no occasion for the Tribunal to return the findings on issue No.1 holding Ishar Singh-deceased responsible for undertaking the risk of suffering the accident. He could not be termed to have contributed the negligence in the alleged accident. Therefore, the findings of learned Trial Court in apportioning the negligence in the ratio of 50-50 is not tenable.

FAO NO.679 OF 1992

I do not find any merit in the contention of the learned counsel for the appellant.

The learned Tribunal has recorded the detailed reasons that Ishar Singh was responsible for contributory negligence in sitting on the roof top of the ill-fated bus and has rightly arrived at a conclusion. Admittedly, Ishar Singh-deceased was the member of the staff and was a driver of the Haryana Roadways, he was well conversant with the Rules that over-loading in the bus is not allowed particularly on the roof top.

Therefore, the findings recorded by the learned Tribunal with respect of holding deceased Ishar Singh responsible for negligence and under going the risk of accident is maintained. The ratio of negligence apportioned between deceased and driver of the bus is to the extent of 50% each. Therefore, the findings on issue No.1 does not call for any interference and the same is maintained.

Adverting to the quantum of compensation which has been awarded by the Tribunal, the learned counsel for the appellant contended that the Tribunal has not taken into consideration the income of the deceased deriving from his agriculture pursuit owned at the time of accident as well as the over time duty detailed in Ex.PW5/D which the deceased was earning.

To support his contention, a reference was made to the over time duty performed by deceased during the year 1988 as mentioned in certificate PW5/D placed on record, where it has been shown that the over time was drawn by the deceased Ishar Singh during the year 1988 and the total amount of over time received by him is Rs.8760/-. In this way, an

FAO NO.679 OF 1992

average over time besides the salary of Rs.1913/- comes to Rs.730/- per month. If this amount is included in the salary of the deceased, the income of the deceased from salary comes to Rs.2643/- per month, which is rounded off Rs.2650/-. Out of this amount 1/3rd cut is applied as an expenses of the deceased, which is rounded off Rs.900/- per month. Thus, the dependency of the claimant comes to Rs.1750/- per month instead of Rs.1400/- per month as assessed by the Tribunal.

It is pertinent to mention here that the claimant has placed on record the details of over time duty performed by the deceased from the year 1986 to 1988 which though varies from time to time but at the time of assessing the compensation, the latest over time has to be taken into consideration while assessing the dependency of the claimants. The deceased has since suffered death at the age of 45 and a multiplier used by the Tribunal is 13 also appears to be on the lower side. Thus keeping in view the age of deceased and catena of the authorities of various High Courts a suitable multiplier of 15 is adopted in this case. Hence, the compensation works out to be $(1750 \times 12 \times 15) = \text{Rs.}3,15,000/-$.

In view of the findings on issue No.1 recorded by the Tribunal and affirmed by this Court holding the claimant responsible for contributory negligence and his negligence has been apportioned as 50-50. The amount of compensation of Rs.3,15,000/- is reduced to Rs.1,57,500/-

Now, coming to the income alleged to have been derived from the land owned by deceased-Ishar Singh, it is pertinent to mention here that during the pendency of appeal before this Court, an application under Order 6 Rule 17 CPC was moved to amend the original claim petition

FAO NO.679 OF 1992

with respect to the enhanced amount of compensation in column No.6. The monthly income of the deceased has been shown as Rs.4,000/- besides Rs.3,000/- derived as income from the agricultural land which is equal to Rs.7,000/- per month. An application under Order 41 Rule 27 CPC was also moved to place on record the copy of Jamabandi pertaining to two villages which reflects that the deceased owned 43 kanals of land i.e.15 kanal 11 marla land in village Korwa Khurd and the remaining 28 kanal in village Babbak Majra but no copy of khasra girdawari has been placed on record so as to show as to what crops were being sown in the land by the deceased-Ishar Singh. As per the entry Ishar Singh is shown in the self cultivating possession of the land. An affidavit of Harbans Singh, legal heir of the complainant to this effect was also placed on record. The report of the Patwari has not been placed on record to show what was the yield of the crop per acre in the aforesaid villages.

Thus in the absence of any evidence with respect to the income derived from the agriculture pursuit, no presumption can be drawn to ascertain the actual amount, which he used to draw during his life time from his share of the land situated in the aforesaid villages. It was incumbent upon the claimant to have led cogent and convincing evidence on the record to show the earnings from the agriculture pursuit. So, no compensation can be awarded with respect to the income derived from the agriculture pursuits.

In the net result, this petition is accepted. The compensation awarded by the Tribunal is enhanced to Rs.1,57,500/-, which the claimant would be entitled to recover from respondents No.1 to 3 jointly

FAO NO.679 OF 1992

and severally. The liability of Insurance Company-respondent No.5 will remain to the extent of Rs.15,000/- as awarded by the trial Court.

Coming to the rate of interest, previously it used to be 12 per cent, however, in the recent years the bank rates have been considerably reduced and the rate of interest is being awarded at the rate of 6% in view of the judgment of the Supreme Court in **Tamil Nadu State Transport Corporation Limited Vs. S.Rajapriya and others**, (2005-2) PLR 650. Therefore, in that back-drop of the situation, the enhanced compensation in this case shall carry interest at the flat rate of 6% per annum from the date of award passed by this Court till its realization.

July 10, 2006

jt

**(R S MADAN)
JUDGE**